

# **STATE REVOLVING LOAN FUND**

## **GUIDANCE AND REQUIREMENTS**



revised 12/00

DEPLW132-A2000 SRFREQ1.DOC

## **SRF GUIDANCE & REQUIREMENTS**

This guidance is intended to supplement the SRF Construction Requirements, document number DEPLW-133-D2000, and acquaint the loan recipient (loanee) with the SRF program requirements that will apply to the loanee and contractors performing work for the loanee.

The companion document, DEPLW-133-D2000, includes specific language that must be included in all specifications prepared for bidding utilizing SRF funds.

### **Section 1 GENERAL REQUIREMENTS**

Rules for the SRF Program, which is jointly administered by the State Department of Environmental Protection (DEP) and the Maine Municipal Bond Bank (MMBB) can be found at the following internet site:

<ftp://ftp.state.me.us/pub/sos/cec/rcn/apa/06/096/096c595.doc>

The regulations cover general program requirements as well as specific requirements of the Bond Bank and the DEP. The Rules require the State to conduct an environmental review of each project to insure that the project complies with applicable local, state, and federal laws and Department Rules relating to the environment. The Environmental review, which resembles the National Environmental Policies Act (NEPA) used for EPA grants in the past, includes the following laws and authorities:

- Archeological and Historic Preservation Act of 1974, PL 93-291
- Clean Air Act,
- Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.
- Coastal Zone Management Act of 1972, PL 92-583, as amended
- Endangered Species Act 16 U.S.C. 1531, et seq.
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.
- Fish and Wildlife Coordination Act, PL 85-624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended
- Wild and Scenic Rivers Act, PL 90-542, as amended

Additional legislation include:

- Age Discrimination Act, PL 94-135
- Civil Rights Act of 1964, PL 88-352
- Section 13 of PL 92-500; Prohibition against sex discrimination under
- Federal Water Pollution Control Act

Executive Order 11246, Equal Employment Opportunity  
Executive Orders 11625 and 12138, Women's and Minority Business  
Enterprise  
Rehabilitation Act of 1973, PL 93-112 (including Executive orders 11914  
and 11250)  
Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL  
91-646  
Executive Order 12549 Debarment and Suspension  
Drug-Free work place

The environmental review of the project is done once the project is  
determined to be eligible for SRF funding.

The DEP will make a determination of eligibility early in the project. The  
loanee should forward a copy of the Facility Plan or Preliminary Design Report to the  
DEP for review. Engineering Agreements should be submitted for approval as well  
as Plans and Specifications at 30% and 95% completion.

Performance standards for new facilities are mutually agreed upon by the  
Loanee and DEP before construction begins. After completion and one year of  
operation, the loanee must certify that the completed project and components meet  
the mutually agreed upon performance standards.

## Section 2 LABOR STANDARDS AND EQUAL EMPLOYMENT OPPORTUNITY

Federal Wage Rates or State Wage Rates are not required to be included in  
projects funded after September 30, 1994. In many cases, however, SRF funds are  
used in conjunction with other sources of federal funds such as EDA or CDGB funds  
which may require federal or state wage rates

A. Although Wage Rates do not apply, the loanee and contractors must comply  
with certain regulations of the Secretary of Labor. These regulations are based  
upon the following:

1. The Copeland Anti-Kickback Act of June 13, 1934, as amended (40 USC  
276c)
2. The Contract Work Hours Standards Act of August 13, 1962 (40 USC  
327-330) and any amendments or modifications of that act, and
3. Fair Labor and Standards Act of 1938 as amended (PL 93-259, 88 STAT.  
55; USC 201, et. seq.).
4. The Safety and Health Regulations (CFR 29 Part 1926 and all subsequent  
amendments) as promulgated by the U.S. Department of Labor on June 24, 1974.

B. The loanee and contractor will cause appropriate provisions to be inserted in subcontracts to insure compliance of subcontractors with the regulations cited in A, above, and will assume responsibility for submission of such statements and/or assurances as are required of the subcontractors.

The following documents must be prominently posted and maintained by the contractor at such place or places on the project site where they can be easily seen by employees.

1. "Notice to Labor Union or Other Organizations of Workers"
2. "Equal Employment Opportunity is the Law" poster.
3. "Notice Relative to the Regulation of Employment" (State Poster)
4. "Minimum Wage" (State Poster)
5. "Whistleblowers' Protection Act" (State Poster)

C. In addition to regulations governing labor standards, construction contracts are subject to the requirements of Title VI, Civil Rights Act of 1964, which prohibits exclusion from participation, denial of benefits, or subjection to discrimination on the basis of race, color, or national origin; and Executive Orders 11246, September 24, 1965 ( 30 FR 112319), which prohibits discrimination in federally assisted construction contracts on the basis of race, creed, color, or national origin, and 11375, which prohibits discrimination on the basis of sex.

D. Information on non-discrimination in employment is to be included in all specifications prepared. Reference to Executive Order 11246 must be included in the Advertisement for Bids. The Information for Bidders must include the following five (5) paragraphs

1. Contracts for work under this proposal will obligate the contractors and the subcontractors not to discriminate in employment practices.
2. Bidders must submit with their initial bid, a signed statement as to whether they have previously performed work subject to the President's Executive Order No. 11246, or any preceeding similar Executive Order.
3. Bidders must, if requested, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive the award of the contract.
4. Successful Bidders must, if requested, submit a list of all subcontractors who will perform work on the project, and written signed statements from the authorized agents of labor pools with which they will or may deal for employees on the work together with supporting information to the effect that such labor pools' practices and policies are in conformity whit Executive Order No. 11246; that they will affirmatively cooperate in or offer no hindrance to the recruitment, employment, and

equal treatment of employees seeking employment and performing work under the contract or, a certification as to what efforts have been made to secure such statements when such agents or labor pools have failed or refused to furnish them prior to the award of the contract.

5. Successful Bidders must be prepared to comply in all respects with the contract provisions regarding non-discrimination, which are contained in the labor standards.

### Payment of Employees

#### Minimum Wages

All mechanics and laborers employed or working upon the construction site work of the project, will be paid the full amounts due at time of payment computed at wage rates not less than State Minimum Wage regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

#### Overtime Payments

An employer is obligated to make proper wage payments under the Fair Labor Standards Act, and the Contract Work Hours Standards Act, for hours worked in excess of 40 hours in a work week. An employee must receive compensation at a rate not less than one and one-half times the regular rate of pay (basic hourly rate) for all hours worked in excess of 40 hours per week.

### Wage Record of Contractor

The contractor and each of subcontractor shall keep an accurate record showing the names, social security number, and occupation of each and all laborers, workmen, and mechanics employed by them in connection with this Project showing the hours worked, the title of the job, the hourly rate and the actual wages paid to each of them. A copy of such record shall be kept at the job site and shall be open at all reasonable hours to the inspection of the Bureau of Labor Standards, the loanee, and the Department of Environmental Protection.

### Retention of Payroll Records

Payroll records, including original field notes and back up material will be maintained during the course of the work by the contractor, including payroll of each subcontractor for a period of three years after the completion of the project.

### Violations of Labor Standards

In the event of a violation of the Overtime Payments clause the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages and shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages.

In the event of any violation by the CONTRACTOR or subcontractor of the labor standards provisions of their contract, the OWNER may, after notice to the CONTRACTOR, suspend further payments until such violations have ceased.

### Section 2. MINORITY AND WOMENS BUSINESS ENTERPRISES MBE/WBE

The loanee and contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps shall include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprise;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

The goals for this project are a minimum of **five (5) percent** MBE and WBE participation (**1.3% MBE; 3.7% WBE**). Contractors must demonstrate a good faith effort in meeting the goals. The successful bidder must submit to the Owner, within ten (10) days of the bid opening, the appropriate one of either Attachment A (the MBE/WBE goals having been met) or Attachment B (the MBE/WBE goals not having been met) completed in its entirety. In addition, the Contractor shall submit to the Owner, a quarterly compliance report (Form 334) listing the MBEs and

WBEs, their work and the amount of payment to each during the quarter, for the duration of the contract. (Attachment A, Attachment B, and Form 334 are included in DEPLW-133-C3).

NOTE: The most recent copy of the Maine Department of Transportation's "Certified Disadvantaged Business Enterprise Directory" is available on the internet at the following address:

[http://www.state.me.us/mdot/humnres/o\\_equalo/cdwbed\\_h.htm](http://www.state.me.us/mdot/humnres/o_equalo/cdwbed_h.htm)

For trades not listed in the MDOT directory, additional certified businesses may be listed in the Massachusetts State Office of Minority and Women Business Assistance (SOMBWA) web site, found at:

<http://www.state.ma.us/somwba/>

### "Or Equal" Clause

Whenever a material, article, or piece of equipment is identified by reference to a manufacturer or trade name, it shall be understood that this is referenced for defining the performance of the material, article, or piece of equipment and that other products of equal capacities, quality and function shall be considered. It shall be the contractor's responsibility to coordinate all submittals to the engineer for approval to eliminate any conflicts which might arise due to the use of the "or equal" item. Any additional costs incident to the use of "or equal" items will be paid by the contractor.

### Bid Protests

All protests arising from the loanee's procurement practices must be submitted to the loanee as soon as practical. The loanee will investigate the basis for the protest, seek the advice of legal counsel, document all meetings and actions, and attempt to resolve the protest promptly and equitably.

In the event that the protest is not settled, an appeal may be filed with the Department of Environmental Protection (DEP).

### Claims or Disputes

All claims or disputes between the loanee and the contractor must be settled informally using the DEP as a mediator or formally in a court of law. Formal Arbitration proceedings will not be allowed. All resolved disputes and claims must be submitted to the DEP by change order for approval before payment.

All claims, disputes, and other matters in question arising out of, or relating to, the Contract Documents or a breach thereof, shall be settled by litigation in a court of competent jurisdiction.

### Access to records

The OWNER, DEP, Maine Municipal Bond Bank and the Comptroller General of United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of the loanee or



contractors which are pertinent to this project in order to make audits, examinations, excerpts, and transcripts.

Expiration of right of access. The rights of access shall last as long as the records are retained. The minimum retention period is three years.

### Project Sign

The loanee shall include a project sign as detailed and specified in one of the prime contract documents. The details of the sign may vary depending on the sources of funds. A copy of the sign is available upon request from the DEP. The contractor shall maintain and keep the project sign in good condition until the work is completed when the sign will be removed. Provide adequate supports for sign as site conditions may require and keep sign a proper distance above prevailing grade to permit public viewing.